

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Closed Captioning and Video ) MM Docket No. 95-176  
Description of Video Programming )

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REPLY COMMENTS OF TIME WARNER CABLE

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**REPLY COMMENTS OF TIME WARNER CABLE**

Time Warner Cable, a division of Time Warner Entertainment, L.P. ("TWC") respectfully files its reply comments in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY.**

The Commission should not, separate from the existing closed captioning regime, impose new emergency information captioning requirements on video program providers. TWC's comments address this issue in the particular context of local cable news services.

TWC believes that the needs of its hearing impaired subscribers must be meaningfully addressed and that all television viewers should have adequate access to emergency information. However, TWC cautions that a real-time closed captioning requirement imposed on local cable news services could hinder the development of this new and important source of local

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<sup>1</sup> Closed Captioning and Video Description of Video Programming, MM Docket No. 95-176, *Further Notice of Proposed Rule Making* (rel. Jan. 14, 1998) ("FNPRM").

news programming. TWC currently operates local cable news services in Rochester, New York; Orlando, Florida; Tampa Bay, Florida; and New York City. It is committed to launching such services in additional communities served by TWC.

TWC believes that the Commission should not impose a separate regulatory framework for emergency information for the following reasons:

- Local cable news services already provide emergency information to the hearing impaired. Real-time captioning of emergency information, while most effective, is not necessary during the transition to full captioning.
- New local cable news services likely could not reasonably absorb the economic burden a real-time captioning requirement would entail. The Commission therefore should not disturb the transition period, programmer discretion to prioritize captioning needs, and exemptions in the current closed captioning rules. The Commission should allow more time for the current rules to take effect.
- The Commission should take a balanced approach to its closed captioning rules, encouraging the development of new local news sources, thereby promoting localism and program diversity.

## **II. THE COMMISSION SHOULD NOT NOW IMPOSE EMERGENCY INFORMATION CAPTIONING REQUIREMENTS ON NEW LOCAL CABLE NEWS SERVICES.**

The Commission has asked whether video program distributors should be required to offer real-time closed captioning of emergency information immediately, instead of over a period of years under the current closed captioning rules.<sup>2</sup> The current closed captioning regime, while not perfect, strikes a reasonable balance between the legitimate concerns of the hearing impaired,

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<sup>2</sup> FNPRM at ¶ 12.

on the one hand, and the public policy goal of fostering the development of new local programming sources, on the other. Such a balanced approach should be maintained as the Commission resolves the issues raised in this proceeding.

**A. Real-Time Captioning Is Not Immediately Necessary Because Local Cable News Services Already Provide Adequate Alternatives, Including Visual Presentations Of Emergency Information And ENR Captioning.**

As several commenters pointed out, it is not at all clear that, under the Commission's existing regulatory regime, the hearing impaired lack meaningful access to emergency information.<sup>3</sup> To the contrary, local cable news programmers present emergency information in a plethora of visual formats accessible to hearing impaired viewers.

First, in order to survive in the highly competitive local news arena, cable news services use multiple visual techniques to present emergency information. These include slides, scrawls, and open captioning.<sup>4</sup> TWC's new local cable news services compete against established broadcast affiliates' news programs. Just as the incumbent affiliates employ a variety of means to

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<sup>3</sup> See, e.g., NCTA Comments at 8; NAB Comments at 3; ABC Comments at 3; Paxson Comments at 2; WCA Comments at 6.

<sup>4</sup> The Commission has stated its expectation that video program providers will use other methods, such as open visual scrawls, open captioning, slides, or other methods to convey emergency information to the hearing impaired. FNPRM at ¶ 4; Closed Captioning and Video Description of Video Programming, Report and Order, 9 Comm. Reg. 412 (rel. Aug. 22, 1997) at ¶ 253 ("Captioning Order").

present emergency information visually,<sup>5</sup> the start-up local cable news services must do likewise.

Second, local cable news services must comply with the Emergency Alert System ("EAS").<sup>6</sup> In practice, many cable operators exceed federal EAS requirements and voluntarily assume state and local EAS mandates.<sup>7</sup> Although the Commission noted that the emergency information at issue in this proceeding does not include the national emergencies encompassed by the EAS rules, the Commission did point out that "state and local authorities may use the EAS to provide early warnings to communities about regional, state and local emergencies."<sup>8</sup> TWC believes that the majority of cable systems provide for audio override by third parties to allow for presentation of local emergency information. In TWC's experience, when necessary, a TWC local cable news service may use a sign-language interpreter.<sup>9</sup> Activities such as these lead local cable news

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<sup>5</sup> See Radio-Television News Directors Assn. Comments at 4.

<sup>6</sup> See 47 C.F.R. §§ 11.1 et seq.

<sup>7</sup> See NCTA Comments at 7.

<sup>8</sup> FNPRM at n.21.

<sup>9</sup> TWC notes that the Commission would be ill-advised to require only certain technological means of presenting emergency information. Often in an emergency, a local cable news service must use any means necessary, including sign-language interpreters, to convey emergency information to hearing impaired viewers. The Commission should not inadvertently foreclose such options by adopting inflexible technological requirements.

programmers to not only meet but exceed their federal EAS mandate.<sup>10</sup>

Finally, local cable news programmers utilize the electronic newsroom ("ENR") method of conveying emergency information to hearing impaired viewers. ENR provides adequate visual emergency information and represents a reasonable compromise between the needs of the hearing impaired and the economic realities facing local cable news channels. Although ENR is imperfect, TWC supports the Commission's view that the use of ENR "will promote accessibility" for the hearing impaired without imposing undue costs on video program distributors.<sup>11</sup> All of TWC's local cable news services will provide ENR captioning twenty four hours per day, seven days a week. Moreover, TWC currently is exploring the feasibility of new ENR technologies, including voice recognition,<sup>12</sup> that will better enable local cable news services to present emergency information to its hearing impaired viewers. Thus, even as the Commission's closed captioning rules are being

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<sup>10</sup> The Commission recently acknowledged that "in some instances, the cable system may provide more local information than the closest broadcast station and may be better suited to convey emergency information to its subscribers." Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System Rules, FO Docket Nos. 91-301, 91-171, *Second Further Notice of Proposed Rule Making* (rel. March 19, 1998) at ¶ 7.

<sup>11</sup> Captioning Order at ¶ 84.

<sup>12</sup> Several commenters supported the advent of voice recognition technology as a viable means of addressing the needs of the hearing impaired. See National Association of the Deaf Comments at 6; California Broadcasters Assn. Comments at 3; Comments of Stavros Center for Independent Living at 4.

phased in, local cable news services are making emergency information accessible to the hearing impaired in a variety of ways.

**B. Real-Time Emergency Captioning Is Not Economically Feasible For New Local Cable News Services.**

The Commission asks whether immediate real-time closed captioning of emergency information is feasible.<sup>13</sup> It is not. Such a requirement could threaten the economic viability of local cable news services which require significant capital investment, high start-up costs, and years of commitment until profitability.<sup>14</sup>

In light of these business realities, the cost of real-time captioning could prove fatal. The Commission acknowledged the high cost of real-time captioning<sup>15</sup> and many commenters expanded on the Commission's findings.<sup>16</sup> In TWC's experience, real-time

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<sup>13</sup> FNPRM at ¶ 9.

<sup>14</sup> Similarly, the Commission has recognized that a regional programming service has limited revenue potential due its small audience, "inherently plac[ing] it in a significantly more precarious financial condition than that of other competing programming services that enjoy broader audience appeal." In re New England Cable News, Memorandum Opinion and Order, 9 FCC Rcd 3231, ¶ 36 (1994) ("New England Cable News").

<sup>15</sup> The Commission specified that real-time stenocaptioning costs from \$120 to \$1200 per hour. Captioning Order at ¶ 41.

<sup>16</sup> See NAB Comments at 3; ABC Comments at 6; Paxson Comments at 2; COSMOS Comments at 1-4; KCRG-TV Comments at 1.



captioning for a substantial part of the program day would cost a minimum of \$100,000 per year, per channel.<sup>17</sup>

To address these cost issues, the Commission asked whether remote captioning is a viable option.<sup>18</sup> Remote captioning is not a panacea. One commenter pointed out that remote captioning requires the use of telephone lines which may not function during an emergency.<sup>19</sup> TWC would add that individuals providing remote captioning services often receive only the audio portion of a system's or station's signal, without visually presented information, and sometimes are unfamiliar with the local communities in question.

Moreover, the lack of editorial control over remote captions would introduce a new set of costly problems. By definition, real-time captioning precludes any editorial oversight before the captioned material reaches the viewing public. The Commission has acknowledged that inaccurate captions have reached the public during emergencies.<sup>20</sup> News directors who use a remote captioning service would be unable to edit such erroneous information in the text, contravening the Commission's stated goal of preserving

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<sup>17</sup> This estimate is based on current projections by TWC's New York City local cable news service. Costs would vary in other communities and would have a particularly negative impact on TWC's smaller news services (e.g., Rochester, New York).

<sup>18</sup> FNPRM at ¶ 11.

<sup>19</sup> See CBS Comments at n.10.

<sup>20</sup> An EAS caption reported that an entire county was to be evacuated due to flooding, while the audio portion announced the evacuation of one city. FNPRM at n.34.

editorial prerogatives and independence.<sup>21</sup> Captioning mistakes during an emergency could cause severe consumer backlash against a cable operator, result in liability for violating the Commission's captioning standards,<sup>22</sup> and harm a cable news service vis-à-vis its established broadcast competitors. For all of these reasons, remote captioning is not a feasible option.

**C. The Commission Should Not Disturb In This Proceeding The Transition Period, Programmer Discretion, And Exemption Decisions That It Adopted Last Year.**

The Commission addressed the costs of closed captioning by creating a transition period in which the new rules will take effect. It further addressed cost issues, in conjunction with Congress' statutory mandate, by establishing revenue-based exemptions to the rules. For the same reasons that the Commission established these measures in the Captioning Order, it should leave them in place with respect to emergency information.

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<sup>21</sup> The closed captioning rules "are not intended to intrude upon video programming providers' editorial decisions." Captioning Order at ¶ 14.

<sup>22</sup> The Commission allowed program distributors to demonstrate compliance with the rules by relying on certifications from program sources. Captioning Order at ¶ 28. The Commission also recognized that program sources might falsely certify to video program distributors that a program had been properly captioned. The Commission concluded that "[d]istributors will not be held responsible for situations where a program source falsely certifies" that programming meets captioning requirements. Id. at ¶ 28. In the same vein, were the Commission to impose real-time emergency captioning requirements immediately, it should allow local news programmers to rely on the certifications of captioning services and indemnify such programmers from any liability stemming from captioners' errors.

The existing transition period will help nascent local cable news services to become viable before assuming the high cost of complete closed captioning.<sup>23</sup> Separate transitional rules for emergency captioning would undermine the balance struck by the Commission when it rejected an expedited captioning schedule for any particular type of programming.<sup>24</sup>

Today, roughly seven months after the Commission reached this decision, the same reasoning applies, especially with respect to local cable news services. As stated above, the Commission has recognized that new programming services must be in operation several years before becoming profitable.<sup>25</sup> Moreover, in its recent EAS order, the Commission established a transition period for small cable systems in recognition of the special economic needs of such systems.<sup>26</sup>

The Commission acted consistently with this precedent by establishing a closed captioning transition period which will

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<sup>23</sup> TWC agrees with the comments in support of maintaining the transition period. See NCTA Comments at 6; Radio-Television News Directors Assn. Comments at 2.

<sup>24</sup> Captioning Order at ¶ 47. The Commission based this decision in part on "realities of the marketplace." Id. at ¶ 17.

<sup>25</sup> "It is not uncommon for new programming services to sustain losses for long periods of time before their investors can begin to see any return on their investment." New England Cable News at ¶ 35.

<sup>26</sup> Cable systems with 5,000 or fewer subscribers per headend, or between 5,000 and 10,000 subscribers per headend, may phase in their EAS requirements over a period of years. Amendment of the Emergency Broadcast System Rules, Second Report and Order, 12 FCC Rcd 15503 at ¶¶ 24-25 (1997).

help new local cable services to survive. As one commenter on behalf of the hearing impaired stated, "[i]t would be unreasonable to require closed captioning of emergency information at this time -- as more information becomes available, these requirements must be phased in."<sup>27</sup> TWC agrees.

Like the transition period, the flexibility afforded to programmers to decide which programming to caption first is sound policy which should not be disturbed. The Commission reasoned that such discretion would allow market forces to dictate which programming will be captioned first during the transition to full captioning.<sup>28</sup>

Finally, the revenue-based exemptions should not be suspended with respect to emergency information. In establishing these exemptions, the Commission responded to Congress' directive to avoid economically burdensome regulations.<sup>29</sup> The Commission adopted the revenue-based exemptions in recognition of the fact that "all providers are not financially equal and that the burden imposed by [the] captioning requirements will vary with the size and resources of the provider."<sup>30</sup>

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<sup>27</sup> Letter from David Eichenauer, Governmental Affairs Specialist, Access to Independence and Mobility (A United Way Agency) to Office of the Secretary, Federal Communications Commission, February 5, 1998.

<sup>28</sup> "[D]istributors can best determine what programs to caption first, and we expect that consumer demand, among other factors, will be taken into account in making those determinations." Captioning Order at ¶ 47.

<sup>29</sup> See 47 U.S.C. § 713(d)(1).

<sup>30</sup> Captioning Order at ¶ 162.

A new, small local cable news service facing revenue shortfalls in its first years of operation could be placed in jeopardy if forced to caption immediately all emergency information. Such an imposition would not comport with the underlying statutory imperative, as the Commission itself has described it, to avoid economic disruption of program providers and distributors. The revenue-based exemptions, as modest as they are, strike an appropriate balance between the needs of the hearing impaired and the survivability of new local cable program services.

**D. Rather Than Impose New Rules For Emergency Captioning, The Commission Should Allow Its Recent Closed Captioning Rules To Take Hold.**

As noted, the Commission's closed captioning rules have had very little time to take effect. The Commission already has taken what Chairman Kennard described as a "vitally important step" in making programming accessible to the hearing impaired.<sup>31</sup> The Commission should not rush to judgment at this early date but rather should revisit the emergency information issue when the closed captioning rules have been in effect for a more significant period of time.<sup>32</sup>

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<sup>31</sup> Statement of William E. Kennard, Chairman, Federal Communications Commission, before the U.S. Senate Subcommittee on Commerce, Justice, State, and the Judiciary, Committee on Appropriations, March 19, 1998 at 15.

<sup>32</sup> See also NCTA Comments at 8.

**III. BY RECOGNIZING THE UNIQUE CONTRIBUTIONS VIDEO NEWS ORGANIZATIONS MAKE TO THEIR COMMUNITIES, THE COMMISSION WOULD SUPPORT LOCALISM, PROGRAM DIVERSITY, AND THE DEVELOPMENT OF NEW INFORMATION SOURCES, THEREBY ENHANCING EXISTING POLICY.**

TWC believes that local cable news networks bring valuable new options and unique services to local communities. This commitment to localism should be encouraged and facilitated by the Commission's approach to new regulation, which almost always brings with it non-trivial economic costs. Indeed, in several cases, consistent with its deeply embedded policy goals of maintaining localism and program diversity among video providers,<sup>33</sup> the Commission has pursued these goals through carefully targeted regulatory relief.

For example, in the context of the program access rules,<sup>34</sup> the Commission declined to impose regulatory burdens on a new, small regional news programmer to "encourage and promote, to the extent consistent with the statute, new and innovative media partnerships and program services" such as news and public affairs programming,<sup>35</sup> and to "foster the public interest in enhancing diversity of programming services."<sup>36</sup> The Commission concluded that such regulatory relief "will have a pro-competitive effect on [a region's] video marketplace because

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<sup>33</sup> See, e.g., Review of Regulations Governing Television Broadcasting, Second Further Notice of Proposed Rule Making, 11 FCC Rcd 21655 at ¶¶ 3 and 7 (1996).

<sup>34</sup> See 47 C.F.R. § 76.1000 et seq.

<sup>35</sup> New England Cable News at ¶ 40.

<sup>36</sup> Id. at ¶ 41.

removal of regulatory barriers to [a provider's] financial viability will enhance, rather than impair, competition in the market for news, sports, public affairs, information and children's programming."<sup>37</sup>

Similarly, in promulgating the closed captioning rules, the Commission sought "to promote competition among sources of video programming, consistent with the 1996 Act's overall intent."<sup>38</sup> The Commission was careful to ensure that the closed captioning rules did not adversely impact program diversity.<sup>39</sup>

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<sup>37</sup> Id. at ¶ 43.

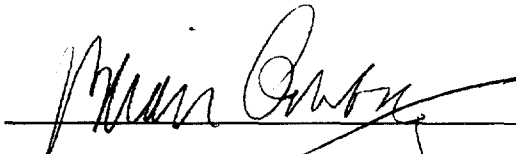
<sup>38</sup> Captioning Order at ¶ 14.

<sup>39</sup> The closed captioning rules "maintain competition among video programming distributors regardless of the technologies used, continue to foster diversity of video programming and encourage new types of video programming to become available to all viewers." Id. at ¶ 14.

#### IV. CONCLUSION

For the reasons stated above, TWC believes that the Commission should not now require local cable news services to offer real-time closed captioning of emergency information.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I, Sharon Ricks, hereby certify that a copy of the foregoing Reply Comments of Time Warner Cable was served by hand delivery upon the following:

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